Excerpts from the briefs filed by Texas and 28 other States recognizing the need for Congressional implementation of the *Avena* Judgment

There is a broad consensus in Supreme Court briefs filed by the State of Texas and 28 other states that Congressional implementation is the appropriate means to implement the ICJ decision in Avena. *Texas and many other States have also taken the position that the ICJ decision binds the United States under international law and that there are compelling reasons for compliance.*

Respondent's Brief of Texas, *Medellín v. Texas*, at 12 (August 2007)
http://www.debevoise.com/publications/pdf/TexasrespondentsbriefMedellin2007.PDF

> To be sure, **Texas recognizes the existence of an international obligation to comply with the United States's treaty commitments**, including, as appropriate, through changes to domestic law. And the Presidential Memorandum surely reflects the President's genuine desire to **"reaffirm[ ] the United States commitment to the international rule of law."**
>
> **[T]he Constitution requires interbranch cooperation between the President and Congress before an ICJ decision can become judicially cognizable domestic law**. . . .Similarly, outside the treaty-ratification process, the Constitution provides Congress, not the President, the power **to transform an international obligation into domestic law.**
>
> At 46:
> **Nobody disputes that the United States has an international law obligation to satisfy *Avena***. Should the President choose to comply with that obligation, there are constitutional avenues available. But, **to change domestic law, the President must first coordinate with Congress** or the States.

Respondent's Brief of Texas in *Medellin v. Dretke*, at 7 (February 2005)
http://www.debevoise.com/publications/pdf/RespondentDougDretkeDirector.PDF

> It is beyond cavil that, as Medellín puts it, **America should keep her word**. But the choice of how to do so, and how to respond to alleged treaty violations, is left to the political branches of government. . . .
>
> **The President and Congress could seek to pass legislation addressing the Avena decision**. . . .[T]hese options are traditional remedies for violations of state-to-state treaties.

Brief of the Commonwealth of Virginia, 27 Other States and Puerto Rico as Amici Curiae in Support of Texas, *Medellin v. Texas*, at 2 and n. 2 (Aug. 23, 2006)

http://www.debevoise.com/publications/pdf/VirginiaandotherstatesamiciMedellin2007.PDF

> **The States do not dispute that the President has a significant interest in complying with [Avena], ensuring security of United States citizens abroad, prompting good relations with Mexico and other foreign nations, and reinforcing our Nation's commitment to the rule of law.** . . . The result sought here...can be accomplished by [other] methods. . . . For example, **Congress could amend federal habeas corpus allow to allow limited judicial review for certain individuals.**

Respondent's Brief of Texas in Opposition, *Medellin v. Texas*, at 18-19 (March 2007) http://www.debevoise.com/publications/pdf/BIO.pdf

> Because there has been no **action by Congress rendering the *Avena* judgment self-executing federal law**, the decisions of the ICJ, necessarily including *Avena*, do not of themselves constitute federal law binding on the courts. . . . And **it has long been clear that the responsibility for transforming an international law obligation into domestic law falls to Congress**, not the President.

Brief for The States of Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Mississippi, Missouri, Montana, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Utah, and Virginia in support of Respondent the State of Texas in *Medellin v. Dretke*, at 3 (Feb. 28, 2005) http://www.debevoise.com/publications/pdf/Brief%20of%20Respondent%20Doug%20Dretke,%20Director,%20Texas%20Department%20of%20Criminal%20Justice,%20Correctional%20Institutions%20Division._v1.PDF

> Given the statutory barriers to relief, **it would be best to allow the Executive Branch and the Congress to address implementation of the judgment in *Avena*** in the first instance, where all of the issues raised by that judgment can be considered together.
>
> At 17-18:
> **Under the judgment in *Avena*, the United States must choose how to provide "review and reconsideration of the convictions and sentences" at issue.** *Avena*, *supra*, ¶ 153(9). As a delicate matter of foreign policy, **that task should be left to the Executive Branch and Congress**, at least in the first instance. . . .
>
> The political branches can work toward a solution that protects and balances the United States' sovereignty interests, the States' interests in finality and the efficient administration of criminal justice, and foreign nationals' interests in consular notification in an equitable fashion—**all the while bearing in mind the important ramifications such a solution would have for United States citizens living and traveling abroad.**